

“Help America Vote Act of 2002”

NASS/NCSL Summary & Potential Issues/Recommendations

TITLE I – EARLY PAYMENTS TO STATES

1. “Early Out Money” to States to Improve Elections

Sections 101, 103, 104 referenced

- This is a payment program administered by the General Services Administration (GSA.) It must be up and running within 45 days of enactment.
- In order to be eligible for funds the Governor of a state, in consultation with the Chief State election official must certify within 6 months of enactment that the state will use the money to improve elections (there is a laundry list of activities that qualify from replacing equipment to developing a state plan). The state must also certify that the use of these funds will not be inconsistent with existing federal laws and will not be inconsistent with the voting equipment requirements found in the legislation.
- State may not use these funds to pay for any litigation or for the payment of any judgment.
- Payment amounts would be a minimum payment (most cases ½ of 1% of total amount appropriated for this section, or 1/10 of 1% for American Samoa, Guam, PR, US Virgin Islands) plus state VAP/national VAP of total amount (minus the already calculated minimums)
- Total authorization for this section is \$325 million dollars
- No fiscal year limitation on money given to the states under this section

Potential Issues/Recommendations

1. States should first review all current state law to make any necessary changes to comply with federal law.
 2. States need to establish an “Election Fund” immediately.
 3. Federal law does not address whether or not these funds could be used as reimbursement or retro payment.
 4. The **GSA** must have their program up and running by **December 13, 2002.**
 5. **States** who want funding **must submit certification by April 29, 2003**
 6. The GSA will most likely set up an online application process and with the ability for Electronic Funds Transfer (EFT)
- #### **2. “Early Out Money” to States for Punch Card/Lever Machine Replacement**
- ##### **Sections 102, 103, 104 referenced**
- This is a payment program administered by the GSA. It must be up and running within 45 days of enactment.
 - Under this program, states receiving money must have precincts, which used punch cards or levers in the Nov 2000 election. These are referenced as qualifying precincts.
 - States must submit a certification (does not identify which official must do certification) within 6 months of enactment that the money will be used as

outlined below. If a state needs to pass legislation to meet certification requirements, the legislation allows for the state to make an initial certification and make a subsequent certification once state law is passed.

- States must use this money directly or as reimbursement (including reimbursement for costs incurred on or after January 1, 2001 under multi-year contracts) to replace punch cards and levers that were used in Nov 2000 election.
- States must replace equipment with something other than punch cards or levers, new equipment must meet all current federal laws and new equipment must meet the equipment requirements of the legislation.
- A state receiving payment under this section must ensure that ALL punch cards and/or lever equipment used in the Nov 2000 election will be replaced in time for the November 2004 election.
- States can get a waiver to January 1, 2006 “for good cause and listing the reason for the failure to meet the Nov 2004 deadline” If states do not replace all equipment by the deadline, they must return the money for the precincts where equipment wasn’t replaced.
- Total authorization for this section is \$325 million
- States will receive payment based on number of qualifying precincts times \$4000. If actual appropriated funds are less than authorized funds the \$4000 amount will be reduced.
- No fiscal year limitation on money given to the states under this section

Potential Issues/Recommendations

1. States should first review all current state law to make any necessary changes to comply with federal law.
2. States need to establish an “Election Fund” immediately.
3. The **GSA** must have their program up and running by **December 13, 2002.**
4. **States** who want funding **must submit certification by April 29, 2003**
5. The GSA will most likely set up an online application process and with the ability for Electronic Funds Transfer (EFT)
6. This section of the law does not identify who should submit certification to GSA, unlike previous section, which identifies the Governors.

3. Minimum Payment to States Sections 103, 104 referenced

- Any state that submits a certification for payment under section 101 or 102 or both shall be eligible for a minimum of \$5,000,000. If the payment under section 101 or 102 or the combination of both don’t add up to at least \$5,000,000, the Administrator of GSA will make a payment to the state for the difference. Except for PR, Guam, US Virgin Islands and American Samoa, the total shall be 1,000,000.
- All payments to the state under this title are to be deposited in the state election fund – when the fund is set up in the state. It must be set up in time to receive the “requirements payments” outlines below.

Potential Issues/Recommendations

1. If this federal funding arrives before “Election Fund” is established, states need to determine where funds will go in the interim.

TITLE II - COMMISSION

1. Election Assistance Commission

Section 201, 241, 242, 245, 246 referenced

- A new independent entity consisting of 4 commissioners appointed by the President by and with the advice and consent of the Senate. The leadership of the House and Senate shall submit a candidate recommendation for the commission posts.
- The commissioners must have experience with or expertise in election administration or the study of elections.
- Commissioners must be appointed with 120 of enactment. Except for all initial appointees, the term will be for four years. This is a full time position at level IV of the Executive Schedule.
- The professional staff of the Commission will consist of at least an Executive Director and a General Counsel
- The commission shall hold hearings.
- The commission shall function as a clearinghouse for election administration information. Shall also be responsible for the testing and certification program for election systems. Must also produce a myriad of studies on a multitude of issues related to elections. Put together voluntary guidance on how states could meet new federal requirements. Responsible for the grant programs in the bill and responsible for the Help America Vote College Program.
- Commission will also be responsible for putting together studies with the DOD on the issues of military voters and report within 18 months. Recommendations for best practices must come from the studies.
- Within a year of enactment the Commission, in consult with NIST shall submit a report to Congress accessing human factor research
- The Commission shall also do a study on the impact of the new ID requirements on voters who register by mail and impact on states. Report must be done within 18 months of provisions taking effect.
- Any action taken by the Commission can only be done with the approval of at least three commissioners.
- Final adoption of the Voluntary Voting System guidelines must include a process that incorporates publication in the Federal Register, public comment, public hearing and publication of the final guidelines in the Federal Register
- Voluntary voting system guidelines cannot be voted upon until Standards Board and Board of Advisors have submitted recommendations and until 90 days have passed since the ED submitted guideline for their approval.
- The Commission has NO rulemaking authority or the ability to promulgate regulations or take action, which imposes a requirement on any state or local gov- except what is already permitted under NVRA.

- Initial voting system guidelines will be the most recent passed by the FEC prior to the date of enactment.

Potential Issues/Recommendations

1. President Bush issued a statement after he signed the legislation into law that basically stated that he would not feel compelled to nominate commissioner recommendations submitted by Congressional leadership and that he interprets the timeframe of 120 days for appointing commissioners as advisory.

2. Election Assistance Standards Board

Section 211 referenced

- Responsible for reviewing the voluntary voting system guidelines and the voluntary guidance procedures to assist states in meeting the new federal requirements related to equipment, election day activities, etc.
- Standards Board will be made of 110 officials – 55 state and 55 local election officials.
- The chief state election official will select one state election official and the locals, under the supervision of the chief state election official, will select one rep per state. The state/local rep from each state must be of differing political parties.
- Within 90 days of enactment, the chief state election official of each state must submit both names to the FEC (until new commission is in place.) Upon receipt, the FEC (until new commission is in place) shall publish a certification that the officials are appointed as standards board members. If a state doesn't submit names within 90 days, they can't participate in the selection of the initial Standards Board Executive Board.
- The Executive Board of the Standards Board will consist of 9 members and shall be selected by the Standards Board.
- No pay – but per diem reimbursement for expenses
- Must meet at least once a year to vote on voluntary voting system guidelines and at least once every two years to selection Executive Board
- The ED of the commission shall submit proposed guidelines to Executive Board, who will consider and forward its recommendations to full Standards Board
- Standards Board shall review proposed voluntary voting system guidelines

Potential Issues/Recommendations

1. Chief State Election Official must submit names of state and local representatives on the Election Assistance Standards Board to FEC **by January 27, 2003.**

3. Election Assistance Board of Advisors

Section 211 referenced

- 37 member Board of Advisors
- 2 members each from NGA, NCSL, NASS, NASED, NACo, NACRC, US Conf of Mayors, Election Center, IACREOT, US Comm on Civil Rights, ACCESS Board.

- Chief or designee from DOJ Office of Public Integrity, chief or designee of the DOJ Voting Rights Section/Civil Rights Division, director of FVAP
- 4 members from science/tech community appointed by congressional leadership
- 8 members representing voter interests 4 appointed by House Admin, 4 appointed by Senate Rules.
- All appointees must be bipartisan and reflect various geographic regions.
- Two year terms and may be reappointed.
- Must meet at least once a year to vote on voluntary voting system guidelines
- The ED must submit proposed guidelines to the Board of Advisors

Potential Issues/Recommendations

1. There is no timeframe outlined for appointment by these various organizations.

4. Technical Guidelines Development Committee Section 221 referenced

- Committee will assist the ED in the development of the voluntary voting system guidelines
- First set of recommendations re guidelines are due to ED no later than 9 months after the appointment of all committee members.
- Total of 15 members appointed by Commission and NIST and headed by Director of NIST. Members shall consist of reps from Standards Board, Board of Advisors, Access Board, ANSI, IEEE, and 2 from NASED who are not already members of Standards Board and Board of Advisors and others with technical expertise.
- A majority of the members of this committee will constitute a quorum. All members must be appointed before business can be conducted.
- No pay, just per diem reimbursement
- NIST shall provide the support to committee to carry out duties including R/D to support the development of the voluntary voting guidelines including security of computer, networks, computer data storage, computerized lists, methods to detect and prevent fraud, protection of privacy, human factors in designing voting systems, and assistive technologies for the disabled, internet voting.
- If the Commission passes any of the guidelines, the committee must publish in the Federal Register their recommendations related to that guideline that they submitted to the Commission.
- The ED must take into consideration the recommendations of the tech committee when developing the guidelines and any modifications

5. Certification and Testing of Voting Systems Section 231 referenced

- The commission will provide for the testing and certification of equipment. The states can also do their own testing and certification if they choose to do so.
- The Commission shall also accredit laboratories.

6. Election Assistance – Federal “Requirements Payments”

Section 251, 252, 257 referenced

- The commission must make “requirements payments” each year to each state that meets the funding conditions.
- This money can only be used to meet the federal requirements found in Title III of the legislation UNLESS the state certifies to the Commission that it has already implemented ALL of the Title III requirements or the amount spent on those OTHER activities doesn’t exceed the state’s minimum payment amount for the “requirements payment”.
- States may use the “requirements payment” as reimbursement for voting equipment purchased after the Nov 2000 election, if the equipment meets all federal requirements.
- If a state obtained equipment, under a multiyear contract, they may use this “requirements payment” for costs for voting equipment which meets the federal requirements for costs incurred after January 1, 2001 – EXCEPT that the amount the state is otherwise committed to under the MOE requirement must be increased by the original amount of payment made with respect to the multiyear contract.
- States do not have to implement the Commission issued Voluntary Voting System Guidelines as a condition of receiving payment.
- “Requirements payments” to the states that submit a state plan must be made at least once a year and based on a formula of total amount appropriated for the year and the state allocation (SVAP/VAP). Minimum payment is ½ of 1% of total amount appropriated. 1/10 of 1% for the territories.
- Total Authorized amount for requirements payments: FY 2003 – 1.4 billion, FY 2004 – 1 billion, FY 2005 – 600 million.
- Payment is made to states without fiscal year limitation

7. State Eligibility for “Requirements Funds”

Section 253, 254 referenced

- A state is eligible for requirements funds for a FY if the Chief Executive Officer of the state, in consultation and coordination with the chief election official has filed a certification with the commission.
- States can’t file a statement of certification until their state plan has been published in the Federal Register for 45 days.
- The state must submit a state plan for each fiscal year to be eligible for a payment for that year.
- As part of the state plan, the state must file a plan for the implementation of a uniform, non-discriminatory administrative complaint procedure. If this implementation plan is not filed as part of the state plan, it must go through the same process for the development and filing and public notice that the state plan did.
- The state must be in compliance with existing federal law
- If the state plans to use the money for anything other than the federal requirements, the use must not be inconsistent with the federal requirements
- The state must also appropriate funds equal to 5% of the total amount to be spent (federal payment and amount spent by state - then calculate 5%). For those states

getting reimbursed for costs after Jan 1, 2001 under multiyear contract, the state must also incorporate the additional amount of the reimbursement.

- The specific methods of how a state will comply with the elements of a state plan will be left to states.
- “Election funds” must be set up in the treasury of the state government. The fund will hold “Requirements payments”, “early out money”, state matching funds and interest payments. If a state needs to change state law to establish “election funds”, the commission will withhold “requirements payments” until state law is changed and fund is established.

Potential Issues/Recommendations

1. Governor must file self-certified state plan with new commission.
2. The Governor or state must file a certification with either the GSA for the “early money” or the commission for the “requirements payment” by December 31, 2003. If this certification or a notice of intent to participate isn’t filed by that date, the state will be deemed non-participating and must submit a compliance plan of the new federal requirements to the Dept. of Justice. This plan must be approved by DOJ.
3. State plans must be completed and published in Federal Register no later than October 15, 2003.

8. State Plans

Section 254, 256 referenced

- States who want to receive requirements funding must submit a self certified state plan listing all of the provisions below
 1. How the requirements payment will be used;
 2. How the state will distribute and monitor the distribution of the payment to local gov or “other entities” within the state – including the criteria for their eligibility for the funding;
 3. How the state will provide for voter ed, poll worker training,
 4. How the state will adopt voting system guidelines which are consistent with federal requirements,
 5. How the state will establish the funds to accept the federal dollars,
 6. What the state’s budget is for activities,
 7. How the state will maintain their expenditure level so that it is not less than the expenditure level of the fiscal year ending prior to Nov 2000
 8. How the state will measure performance to determine success for the state and for local government in carrying out the plan – timetables, who is responsible for what, etc.
 9. A description of the uniform, non-discriminatory state-based administrative procedure
 10. If the state got any early out money – how was it used and impact on plan.
 11. How will the state conduct ongoing management of the plan
 12. If applicable, any changes from the previous FY state plan and a report on the previous FY state plan success
 13. A description of the committee who helped develop the state plan.

- There is a safe harbor for information contained in the state plan unless it involves criminal acts or omissions.
- Chief state election official develops plan through a committee to include: chief election officials of 2 most populous jurisdictions, other local election officials, stake holders (including reps from disability groups reps) and other citizens appointed by the chief state election official.
- State must make preliminary version of plan available for public inspection and comment 30 days before submission to commission and publicize this.
- State must take into account the public comments before submitting final plan to Commission.

Potential Issues/Recommendations

1. State plans must be completed by September 15, 2003 for public inspection and comment and published in the Federal Register no later than October 15, 2003.

9. State Reporting Section 258 referenced

- Within 6 months of close of FY in which a state receives a “requirements payment”, the state shall submit a report to the commission listing expenditures covered by that payment, # and types of voting equipment purchased with that payment, and analysis and description of activities covered with payment and how it fits in the state plan.

10. Polling Place Accessibility Grant Section 261 referenced

- The Secretary of HHS will make payments to eligible state and local governments. Eligible state and locals will submit an application to the HHS Secretary describing what they will use the money for and whatever else the HHS Secretary requires.
- Appropriate uses of funds outlined in bill include polling place accessibility – physical improvements like path of travel, entrances, exits and voting areas for disabled including blind and visually impaired. Could also include providing the disabled information about polling place accessibility and training for election officials, poll workers and volunteers on assisting the disabled.
- The Secretary shall be prepared to make payments within 6 months of enactment and at least once a year thereafter.
- Payments to state and locals will be for a year and amount will be determined by Secretary. No fiscal year limitation on funds and will remain available until expended.
- No action can be brought against a state or locality for info found in the application unless can be construed as criminal or an omission.
- Authorized \$50 million for FY 2003, \$25 million for FY 2004 and \$25 million for FY 2005
- State or locality must submit a report to Secretary within 6 months of the close of the FY funding was received on how the money was used.

- Each FY the Secretary will then report to House Admin and Senate Rules on the activities taking place across the country.

Potential Issues/Recommendations

1. HHS shall have this program up and running by April 29, 2003.

11. Grants for R&D

Section 271 referenced

- The Commission will make grants to “entities” for R&D on voting equipment, election systems and voting technology.
- Eligible applications will include certifications that R&D will take into account full accessibility, private and independent voting, alternative language accessibility and other certifications the commission may require.
- Director of NIST will submit an annual list of suggestions for issues needing R&D. NIST Director will also review all grant applications and provide comments to the Commission.
- Each entity receiving funding will be required to report to the commission within 60 days of the end of the FY they received the funds.
- Authorized to be \$20 million for FY 2003 and will remain available to until expended

12. Grants for Pilot Programs

Section 281 referenced

- The Commission will make grants to “entities” to carry out pilot programs using new technologies in voting systems and equipment are used on a trial basis and then report to Congress
- Eligible applications will include certifications that pilot programs will take into account full accessibility, private and independent voting, alternative language accessibility and other certifications the commission may require.
- Director of NIST will submit to the Commission an annual list of suggestions for pilot programs and will help to review applications and will help with monitoring and recommendations for any modification.
- Each entity receiving funding will be required to report to the commission within 60 days of the end of the FY they received the funds.
- Authorized to be \$10 million for FY 2003 and shall remain available without fiscal year limitation and until expended.

13. Grants for Protection and Advocacy Systems

Section 291 referenced

- Secretary of HHS will pay the P&A system in each state to ensure full participation for the disabled community. They will same general authorities that they already have under Dev. Disabl Assis. And Bill of Rights Act of 2000.
- The minimum amount of each grant to a P&A system will be determined and allocated according to the Rehab Act of 1973 – except that the amounts shall not be less 70,000 and 35,000.

- Within 90 days of initial appropriation for a FY, the HHS Secretary will set aside 7% to make payments to “eligible entities” for training and technical assistance to carry out activities of the Act. The recipient of this payment may use the funds to support training in the use of voting systems and to demonstrate and evaluate the systems for the disabled community. At least 1 recipient of this 7% funding must provide training and technical assistance for the visually impaired.
- An eligible entity is a public or private nonprofit entity with demonstrated experience in voting issues for the disabled, governed by a board with the majority of members are disabled or family members are disabled, and submits an application meeting all the Secretaries requirements.
- Authorized \$10 million for FY 2003, 2004, 2005 and 2006 and such sums as may be necessary in subsequent fiscal years. Amounts shall remain available until expended.
- None of the funding can be used to initiate or participate in any litigation related to election-related disability access.

14. National Student Parent Mock Election
Section 295 referenced

- The Commission is authorized to award grants to the NSPME to carry out their voter ed activities, including simulated national elections and school forums, speeches and debates by local candidates, quiz team competitions, etc.
- The NSPME will present awards to outstanding student and parent mock election projects
- Authorized to be appropriated \$200,000 for FY 2003 and such sums as may be necessary for the six succeeding years.

TITLE III – FEDERAL REQUIREMENTS

1. Voting System Standards – Requirements
Section 301 referenced

- The voting system shall permit the voter to verify whom they voted for and make any changes to their vote – in a private and independent manner – before the ballot is cast and counted.
- If a voter overvotes, the system will notify them that they have overvoted, what happens to their vote if the overvote and provide the voter with an opportunity to correct or change ballot before cast and counted.
- A state or jurisdiction that uses paper ballots, punch cards, central count (including mail in ballots) may meet this requirement by establishing a voter education program specific to their voting system that tells the voter the effect of overvoting and tells the voter either how to correct the ballot, including how to get a replacement ballot.
- The voting system shall ensure that any notification required preserves the privacy of the voter and the secrecy of the ballot.
- The voting system shall produce a permanent paper record with a manual audit capacity. The system shall provide the voter with the opportunity to change the

ballot before the permanent paper record is produced. This paper record must be available as the official record for a recount.

- The system must be accessible for the disabled in a manner that provides the same opportunity for access and participation as for other voters (including privacy and independence). This requirement can be met through the use of at least 1 DRE or other voting system equipped for individuals with disabilities at each polling place.) All equipment purchased with funds made available under the “requirements payment” purchased after January 1, 2007 must meet the standards for disability access.
- The system shall provide alternative language accessibility pursuant to sec. 203 of Voting Rights Act.
- The error rate for the voting equipment – attributable only to equipment error, not voters – must comply with the error rates established in the voluntary voting systems guidelines in effect at the FEC at date of enactment.
- The state must define uniform and non-discriminatory standards for what constitutes a vote for each category of voting equipment used in the state.
- All states and jurisdictions must meet these voting system standard requirements by January 1, 2006.
- To help states comply with legislation, the Election Assistance Commission will issue voluntary guidance consistent with the requirements of this section by January 1, 2004.

Potential Issues/Recommendations

1. Given the uncertainty and timing of federal funding, may want to prioritize in the following manner
 - Make sure your state meets all minimum federal requirements. This will require a thorough examination of existing state laws.
 - Once money is available, do the most costly requirements or upgrades first. It could be difficult to secure authorized funding in later years.
2. States cannot wait for Election Assistance Commission to issue voluntary guidance before submitting first state plan. Commission has until October 1, 2003 to publish voluntary guidance

2. Provisional Voting Requirement Section 302 referenced

- If a voter states that they are a registered voter in the jurisdiction where they have shown up to vote, and they are eligible to vote in an election for Federal office, but their name doesn't appear on the official list of voters for that polling place they shall be permitted to cast a provisional ballot.
- The election official must notify the voter that they are eligible to cast a provisional ballot.
- The voter can cast a provisional ballot at that polling place after signing an affirmation that states that they are a registered voter in the jurisdiction and that they are eligible to vote.

- The provisional ballot or the info contained in the affirmation will be verified by the appropriate state or local election official. If the information can be confirmed, the provisional ballot will be counted as a vote in accordance with state law.
- At the time the voter casts their provisional ballot, the appropriate state or local election official must give the voter written info that explains how to find out whether or not their vote was counted, and if it wasn't counted, why it wasn't counted.
- The appropriate state or local election official shall establish a free access system for a voter who casts a provisional ballot to check to see whether or not their vote was counted and if not, why not. The state or local official must maintain reasonable procedures to protect the security, confidentiality and integrity of personal info needed for the free access system. Access to info about the provisional ballot will be restricted to the individual voter.
- States described in section 4(b) of NVRA may meet the provisional voting requirements using the voter registration procedures established under state law.
- Any individual who votes for a federal office after the polls close, as a result of a court order or any other order extending the polling hours by a state law shall vote a provisional ballot and held separate from provisional ballots cast by voters during regular polling hours
- Each state and jurisdiction must have provisional voting in place by January 1, 2004
- To help states comply with legislation, the Election Assistance Commission will issue voluntary guidance consistent with the requirements of this section by October 1, 2003

3. Voting Information – Requirements

Section 302 referenced

- The appropriate state or local election official shall be responsible for publicly posting voting information at each polling place on election day.
- Voting info means – sample ballot for that election, info re date and polling place hours of operation, instructions on how to vote, including how to cast a vote and how to cast a provisional ballot, ID instructions for mail-in registrants who are first time voters, general info on voting rights under federal and state laws – including the right to cast a provisional ballot and instructions on how to contact the appropriate officials if rights are violated, general info on federal and state laws regarding prohibitions on acts of fraud and misrepresentation
- The voting information requirements must be in place by January 1, 2004.
- To help states comply with legislation, the Election Assistance Commission will issue voluntary guidance consistent with the requirements of this section by October 1, 2003

4. Computerized Statewide Voter Registration List – Requirements

Section 303 referenced

- Each state (except ND), acting through the chief state election official shall implement, in a uniform and non-discriminatory manner a single, uniform,

official, centralized, interactive computerized statewide voter registration list defined, maintained and administered at the state level.

- The computerized list must contain the name and registration information of every legally registered voter in the state and must assign a unique identifier to each legally registered voter in the state
- The computerized list must be coordinated with other state agency databases
- Any election official in the state may obtain immediate electronic access to the info contained in the computerized list
- All voter registration info obtained by any local election official must be electronically entered on an expedited basis at the time it is provided
- The chief state election official must supply support so the local officials can enter the info electronically and in an expedited manner
- This computerized list shall serve as the official voter registration list for the conduct of all elections for federal office in the state.
- List maintenance shall be performed on a regular basis by the appropriate state or local election official. If an individual is to be removed, it must be done in accordance with NVRA. The state shall also coordinate with agencies that keep records on felony status and death records. If a state is described in section 4(b) of NVRA, they may remove names in accordance with state law.
- List maintenance must be conducted to ensure that all registered voters appear on list correctly, ineligible voters are removed correctly and duplicate registrations are eliminated.
- The states must implement a system of list/file maintenance that makes a reasonable effort to remove ineligible voters. Consistent with NVRA, registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for federal office shall be removed from the official list of eligible voters – no registrant may be removed solely by reason of failure to vote. Safeguards must be in place to ensure that eligible voters are not removed in error.
- The computerized statewide voter registration list must be in place by January 1, 2004 – states could get waiver to January 1, 2006.
- To help states comply with legislation, the Election Assistance Commission will issue voluntary guidance consistent with the requirements of this section by October 1, 2003

5. Voter Registration – Requirements

Section 303 referenced

- New voter registration applications for a federal election may not be accepted or processed by a state unless the applicant has included a driver's license number or the last 4 digits of social security number. If the applicant has neither of those, the state shall assign the applicant a number, which will serve as the unique identifier for voter registration purposes.

- The state shall be responsible, in accordance with state law of determining the validity of the DL # or last 4 digits of SS#
- The chief state election official and the official responsible for DMV will enter into an agreement to match info in the database of statewide voter registration info with the info in the database of DMV to the extent necessary to verify accuracy on voter regis applications.
- The official responsible for DMV shall enter into an agreement with the Commissioner of SS for the purpose of verifying applicable info and include safeguards to ensure the confidentiality of any applicable info disclosed and that info is used for the purpose of maintaining records. Commissioner will supply information when he/she deems appropriate. The Commissioner shall develop methods to verify accuracy of info provided by DMV for those using last for digits of SS#. Information used to verify match will be name, date of birth (month, date, year) and SS#. Information will be used to check Commissioner death records. The Commissioner has the right to determine exceptional circumstances, which would warrant an exception to doing a data match.
- States already permitted to use full SS# can decide whether or not they want to change their procedures to include the above steps.
- These provisions must be in place by January 1, 2004 – possibility for waiver to 2006.
- To help states comply with legislation, the Election Assistance Commission will issue voluntary guidance consistent with the requirements of this section by October 1, 2003

Potential Issues/Recommendations

1. States must review current voter registration applications for reprinting needs based on new federal requirements for additional information.

6. Voter Registration by Mail – Requirements **Section 303 referenced**

- These requirements are to be applied by the state in a uniform and non-discriminatory manner.
- These requirements apply to first time voters in a state who register by mail or a voter who re-registers by mail because they are moving jurisdictions within a state and the state does not yet have a new statewide registration system in place. The voter can include a DL# or the last 4 digits of SS# and if the information can be matched with another database, no additional ID will be necessary. Or if the voter doesn't want to include that information with the registration, they can include a copy of current & valid photo ID or copy of current utility bill, bank statement, government check, paycheck or other gov doc that shows the name and address of the voter. If the voter doesn't include any of the above info, then:
 - If the voter votes in person, the voter would need to show a current and valid photo ID or a current utility bill, bank statement, government check, paycheck or other gov document that shows the name and address of the voter.

- If the voter votes by mail, the voter must submit a copy of the above items with absentee ballot
- Or either in person or voting by mail without the various ID, the vote would be treated as provisional ballot.

None of the above provisions apply to voters entitled to vote an absentee ballot under UOCAVA or provided the right to vote absentee under section 3(b)(2)(B)(ii) of VAEHA.

- The new federal mail in voter registration form must include the following questions: 1. Are you a citizen of the United States of America, 2. Will you be 18 years of age on or before election day? The form will also include boxes for yes and no. The form will also include a statement that says, “If you checked no in response to either of these questions, do not complete form.” The new federal form will also include all information about the voter ID requirements for mail-in registrations and to send in ID requirements with registration to avoid additional ID requirements at the polls.
- If the applicant fails to complete the federal mail-in voter registration form, the registrar must notify the applicant of the problem and provide an opportunity to complete the form before the next Federal election, subject to state law
- Each state and jurisdiction shall be required to comply with the voter registration by mail requirements by January 1, 2004. They must be prepared to receive registration materials submitted by first time voters who register by mail by January 1, 2003.
- To help states comply with legislation, the Election Assistance Commission will issue voluntary guidance consistent with the requirements of this section by October 1, 2003

Potential Issues/Recommendations

1. Election officials should meet with groups involved in voter registration drives to help determine new procedures

TITLE IV – ENFORCEMENT

1. Department of Justice

Section 401 referenced

- The AG may bring civil action against any state or locality for declaratory and injunctive relief as may be necessary to carry out the uniform and non-discriminatory federal requirements in the bill.

2. State-Based Administrative Complaint Process to Remedy Grievances

Section 402 referenced

- Any state that receives any kind of funding under this legislation must set up a state-based administrative complaint procedure. The procedure shall be uniform and non-discriminatory.
- A “non-participating state” is defined as a state during 2003 that does not notify any federal office responsible for a grant program in this bill of their intent to participate in and receive funds.

- A complaint may be filed by any person who believes that there is a violation of any provision of Title III (the federal requirements). Including violations which have occurred, are occurring or is about to occur)
- Any complaint filed shall be in writing and notarized and signed and sworn by the complaint filer. At the request of the complainant, there must be a hearing on the record.
- The state may consolidate complaints.
- If, using the procedures, the state determines that there is a violation of any provision of title III, the state must provide the appropriate remedy. If, under the procedures, the state determines that there is no violation, the state shall dismiss the complaint and publish the result.
- Final determination of a complaint must be done with 90 days of filing – unless the complainant consents to longer.
- If the state doesn't meet the deadline, the complaint shall be resolved within 60 days by an alternative dispute resolution procedure.
- By January 1, 2004 each non-participating state must either certify to the commission that they have establish the above defined state-based administrative procedure in the same way a state would that is receiving funds – by including in a state plan or not filed as part of the state plan, it must go through the same process for the development and filing and public notice that the state plan did. Or they must submit a compliance plan to the AG providing detailed information on the steps the state will take to ensure that federal requirements in Title III are met.
- The non-participating state that chooses to submit a plan to the AG, must have the plan approved by the AG or they will be deemed out of compliance.

Potential Issues/Recommendations

1. States must set up their grievance process and should submit with state plan or else state will be subject to DOJ approval of compliance plan.

TITLE V – COLLEGE POLL WORKER PLAN

- Within a year of enactment, the EAC shall develop the Help America Vote College Program to encourage college students to serve as non-partisan poll workers and to encourage state and local governments to utilize the resource the students provide.
- In consultation with the chief election official, the commission shall develop materials, sponsor seminars and workshops, public service ads, provide grants.
- All materials will be made available without charge to the colleges
- All activities and grant recipients must be without partisan bias and without promoting any particular point of view on any issue.
- \$5 million appropriated in 2003 and such sums as necessary in each succeeding fiscal year.

TITLE VI – HELP AMERICA VOTE FOUNDATION

- The foundation is a federally chartered corporation of a charitable and non-profit nature with a perpetual existence.
- The foundation's purpose is to mobilize and place secondary school students to participate in the election process in a non-partisan manner as pollworkers or assistants (to the extent permitted by state law)
- The foundation will work with the state and local election officials, local educational outlets, superintendents/principals and other 501c3 non-profit charitable and educational organizations to further the purposes of the foundation.
- All activities must be without partisan bias and without promoting any particular point of view on any issue
- The foundation shall work in consultation with the chief election official in each state to carry out its purposes.
- The Board of Directors, the governing body, will be appointed within 60 days – 4 by the President, 2 by the Speaker of the House, 2 by Minority Leader of the House, 2 by Majority leader of the Senate and 2 by Minority Leader of the Senate. In addition to the directors, the chair and ranking members of House Admin and Senate Rules shall serve as ex officio non-voting board members. The terms are four years. The Board will meet at least once a year and be reimbursed for travel and per diem expenses. The Board appoints officers and employees of the foundation. These people would not be employees of the Federal Government.
- The foundation may adopt a constitution and bylaws, adopt a seal and function as a corporation in DC
- The foundation may enter into such contracts with public and private entities, as it considers appropriate.
- Beginning in 2003, the foundation may sponsor a conference in DC to honor students and others who have served or plan to serve as pollworkers and assistants or who have otherwise participated in the programs and activities of the foundation.
- The principal office shall be in DC unless the Board determines otherwise.
- \$5 million authorized for 2003 and such sums as may be necessary thereafter.
- The foundation must submit an annual report to the Commission, the President and Congress on activities.

TITLE VII – MILITARY AND OVERSEAS VOTING

Sections 701, 702, 703, 706 referenced

- The Secretary of Defense shall ensure that military postal authorities transmit voting materials expeditiously. Secretary shall also ensure that, to the maximum extent practicable, measures are taken to ensure a postmark or other official proof of mailing date is provided on each ballot collected at any overseas location. The Secretary will also ensure that these new measures do not delay the delivery of the ballots to their final destination. Within 6 months of enactment, the Secretary shall report to congress on how this will be done.

- The Secretary of each military division shall – to the maximum extent practicable – provide notice to the military of the last date they can mail their ballots and still get to the state/local office before a general election.
- The Secretary of each military division shall – to the maximum extent practicable – ensure that all military and their families have easy access to voting information and make the national voter registration form prepared for UOCAVA available at enlistment.
- Where practicable, special days will be designated at each military installation for disseminating election info.
- Each state must designate a single office which must be responsible for providing information re voter registration and absentee ballot procedures for military and overseas voters re election for federal office – including procedures for federal write in ballot. Congress recommends this same office ultimately be responsible for accepting all of ballots, registration apps etc from military and overseas voters.
- Within 90 days of a federal election, each state and locality shall submit a report through the state to the EAC on the combined number of absentee ballots transmitted to uniform and overseas voters and the combined number of such ballots returned and shall make the report available to the public.
- The Election Assistance Commission will work on a standardized report format for the states and make available.
- Military voters shall be allowed to use their registration application to receive absentee ballots for the next 2 regularly scheduled general elections for federal office, including any runoffs. The state shall supply the absentee ballot.
- The Presidential designee under UOCAVA must ensure that the voting officers appointed are aware of the requirements of this legislation.
- If a state requires a standard oath or affirmation to accompany any document under this title, they must use the standard oath prescribed by the Presidential designee. The Presidential designee must also provide a separate statistical analysis between overseas citizen voters and uniformed voters
- A state can't refuse to accept or process (for an election of federal office) any valid voter reg app or absentee ballot app simply on the grounds that it arrives too early – must be in place by January 1, 2004
- States must provide a rejected voter reg app or absentee ballot app of military or overseas voter with a reason why it was rejected.

TITLE VIII– TRANSITION PROVISIONS

- All function of FEC's OEA will be transferred to EAC, including all NVRA duties
- Personnel of OEA will be transferred to EAC. They will be protected from losing their jobs or pay grades during the transfer for a year from the enactment date.
- The transition will take place upon the appointment of all members of EAC.
- Until the transition, OEA will continue to operate as always, with some new responsibilities included in this bill.

TITLE IX – MISCELLANEOUS

- Approvals by the Commission or GSA of grants or applications will not have any effect on those states with preclearance requirements under the Voting Rights Act.
- The AG will be reviewing existing criminal statutes concerning election offenses and make recommendations to Congress

Potential Issues/Recommendations

1. Preclearance states should move up internal deadlines to allow for Department of Justice to approve preclearance requirements PROIR TO submitting documents to Election Assistance Commission or General Services Administration.'

11/19/02